

LBNL – PROCUREMENT STANDARD PRACTICES

Section: 22

Labor Laws

Subject: 22.4

Construction Labor Standards

PURPOSE:

This standard practice (SP) describes labor standards requirements for construction subcontracts.

POLICY:

The Laboratory will comply with the requirements of the Davis-Bacon, Copeland, and Contract Work Hours and Safety Standards Acts (the Acts) in subcontracts for construction.

SCOPE:

This SP applies to subcontracts exceeding \$2,000 for construction, alteration, or repair.

DEFINITIONS:

**Construction,
Alteration, or Repair**

Construction, alteration, or repair means all types of work done by laborers and mechanics employed by construction subcontractors and sub-subcontractors on a particular building or work at the site thereof, including without limitation:

- Altering, remodeling, and installation (if appropriate) on the site of the work of items fabricated off-site;
- Painting and decorating;
- Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;
- Transportation of materials and supplies between the site of the work and a secondary site as defined in "Site of the Work" below; and
- Transportation of portions of the building or work between a secondary site as defined in "Site of the Work" below, and the physical place or places where the building or work will remain.

**Contract Work Hours
and Safety Standards
Act**

The Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by the subcontract shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1 1/2 times the basic rate of pay.

Copeland Act

The Copeland Act makes it unlawful to induce, by force, intimidation, threat of dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the government, to give up any part of the compensation to which that person is entitled under a contract of employment.

Davis-Bacon Act

The Davis-Bacon Act provides that no laborer or mechanic employed directly at the work site will receive less than the prevailing wage rates as determined by the Department of Labor (DOL).

Incidental Amount of

An incidental amount of work is work directly related to the

LBNL – PROCUREMENT STANDARD PRACTICES

Section: 22

Labor Laws

Subject: 22.4

Construction Labor Standards

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| Work | installation, movement, or rearrangement of equipment or machinery that is relatively small in amount and does not include changes in a facility affecting its architectural or structural strength, stability, safety, size, or function as a public work. |
| Public Building or Public Work | A public building or public work is any building or work, the construction, prosecution, completion, or repair of which is carried on directly by authority of or with the funds of a federal agency to serve the interest of the general public, regardless of whether title thereof is in a federal agency. |
| Site of the Work | At LBNL the site of the work is generally the physical place or places where the construction called for in the subcontract will remain when work on it is completed, but it also includes secondary sites where a significant portion of the building or work is constructed provided that such secondary site is in the United States and is established specifically for the performance of the subcontract or project (see FAR 52.222-6). |
| Wage Determination | A wage determination is a document issued by the DOL that reflects the prevailing wages for the types of construction designated in the determination and is used in subcontracts performed within a specified geographical area. |

PROCEDURES:

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| Applicability | <p>Requirements for construction must be evaluated to determine the applicability of the Acts. Solicitations and subcontracts to which the Acts apply must incorporate wage determinations, payroll certifications, and other requirements of the Acts covered below.</p> <p>The procurement supervisor or designee shall determine whether a subcontract for construction is subject to the Acts. If applicability cannot be determined, the question shall be referred to the DOE Contracting Officer.</p> |
| Covered Work | <p>Examples of work covered by the Acts include the following:</p> <ul style="list-style-type: none">• Work performed by laborers and mechanics employed by a construction subcontractor at the work site under a subcontract for construction, alteration, and/or repair, including painting and decorating;• Construction of roads, including grading, and their repair, where such repair includes work in roadbeds before resurfacing; building-up shoulders; forming ditches, culverts and bridges; and the actual resurfacing of roads; and• All work for installation, rearrangement, or adjustment of equipment during construction of a new facility (plant), as an |

LBNL – PROCUREMENT STANDARD PRACTICES

Section: 22 Labor Laws

Subject: 22.4 Construction Labor Standards

integral part of the construction project, that permits the facility to be utilized for the purposes intended.

Excluded Work

Examples of work excluded from coverage by the Acts include the following:

- Subcontracts for the furnishing of goods or services, including installation, where the installation requires an incidental amount of construction, alteration, and/or repair;
- Subcontracts for servicing or maintenance work in an existing facility (plant), including installation or movement of machinery or other equipment, that involves an incidental amount of construction, alteration, or repair;
- Subcontracts for operational or maintenance activities (e.g., production, research and development, or community services);
- Subcontracts for demolition, except when performed on a phase of a covered construction project or when subsequent construction activity at the site being cleared is contemplated;
- Subcontracts with a state or a subdivision thereof, to the extent that the employees of the state perform the work;
- Subcontracts with a railroad for construction services to the extent that the services are performed by employees covered by the Railway Labor Act; and
- Recurring maintenance work to roads and parking lots, such as patching surfaces, filling chuck holes, patching shoulders, and resurfacing railroad damage.

Davis-Bacon Wage Determinations

A Davis-Bacon wage determination must be incorporated into all solicitations, subcontracts, and extensions to subcontracts for construction work subject to the Davis-Bacon Act. By inclusion of the wage determination in the subcontract, the subcontractor, including lower-tier subcontractors, will be required to pay the personnel working under the subcontract at least the stated hourly wages and fringe benefits specified in the wage determination.

There are two types of Davis-Bacon wage determinations.

- **General Wage Determinations** — General wage determinations contain the prevailing wage rates for the types of construction designated in the determination and apply to construction performed within a specified geographical area. General wage determinations contain no expiration date and remain valid until modified, superseded, or cancelled, and once incorporated in a subcontract, they normally remain effective

LBNL – PROCUREMENT STANDARD PRACTICES

Section: 22

Labor Laws

Subject: 22.4

Construction Labor Standards

for the life of the subcontract unless an option to extend the term of the subcontract is exercised.

- **Project Wage Determinations** — Project wage determinations are issued at the specific request of a federal agency and are used when no general wage determination applies. Project wage determinations are effective for 180 days from the date of the determination; however, once incorporated in a subcontract, they normally remain effective for the life of the subcontract unless an option to extend the term of the subcontract is exercised.

Obtaining Published Wage Determinations

Procurement specialists shall search the DOL web site for published general wage determinations applicable to their pending construction subcontract. Davis-Bacon wage determinations are available on the following DOL web site:

- <http://www.wdol.gov/>

A copy of the wage determination will be forwarded to the DOE Contracting Officer along with a description of the construction project to which it will apply.

Requesting Project Wage Determinations

If there is no general wage determination available from the DOL web site, a project wage determination must be requested by submitting Standard Form (SF) 308, *Request for Determination and Response to Request*, prior to the issuance of the solicitation. The SF 308 shall be prepared by the procurement specialist and forwarded to the DOE Contracting Officer for processing.

The procurement specialist shall obtain the following information for completing a SF 308:

- A sufficiently detailed description of the work to indicate the type of construction involved,
- The county and state where the work will be performed, and
- The labor classifications needed.

The time required for processing requests for wage determinations will vary according to the facts and circumstances in each case. The procurement specialist should anticipate that such processing will take at least 30 days.

Incorporation of the Wage Determination

A Davis-Bacon wage determination must be incorporated into all solicitations, subcontracts, and extensions to subcontracts for construction work subject to the Davis-Bacon Act.

Solicitations Issued

If a solicitation is issued before the wage determination for the

LBNL – PROCUREMENT STANDARD PRACTICES

Section: 22

Labor Laws

Subject: 22.4

Construction Labor Standards

Without Wage Determination

work is obtained, a notice shall be included in the solicitation that the schedule of minimum wage rates to be paid under the contract will be issued as an amendment to the solicitation.

In sealed bidding, the bids may not be opened until a reasonable time after the wage determination for the work has been furnished to all bidders. In other than sealed bidding, proposals may be opened, evaluated, and negotiated, but final proposals may not be received until the wage determination for the work has been furnished to all finalist bidders.

Payrolls

Within 14 calendar days after the regular payment date of the payroll week, subcontractors are required to submit copies of weekly payrolls applicable to the subcontract and weekly payroll statements of compliance for the subcontractor and all lower-tier subcontractors. The subcontractor may use the DOL Form WH-347, *Payroll*, or a similar form that provides the same data and identical representation.

Compliance Checking

Periodically, compliance checking and investigations of subcontractors' adherence to the labor standards requirements of the subcontract must be performed by the procurement specialist or other designated Laboratory personnel. Compliance checking consists of the following activities, as appropriate:

- Examination of payrolls and payroll statements and, in particular, the correctness of the classifications and hourly rates paid, hours worked, fringe benefits payments, and disproportionate employment ratios of laborers, apprentices, or trainees to journeymen;
- Employee interviews to determine the correctness of classifications, rates of pay, fringe benefits payments, and hours worked;
- On-site inspections to check the type of work performed, number of classifications of workers, and fulfillment of posting requirements;
- Payroll reviews to ensure that payrolls have been submitted on-time and are complete and in compliance with subcontract requirements;
- To ensure consistency, comparison of the above listed information with the inspector's report and daily logs of construction; and
- Detection of inconsistencies, errors, or omissions and review of complaints.

Lower-Tier Subcontracts

The procurement specialist shall require the subcontractor to submit within 14 days after award of the Laboratory's subcontract

LBNL – PROCUREMENT STANDARD PRACTICES

Section: 22

Labor Laws

Subject: 22.4

Construction Labor Standards

or award of a lower-tier subcontract, a completed *Statement and Acknowledgement Form* (SF 1413), acknowledging that the appropriate labor clauses have been incorporated into the lower-tier subcontract.

DOL Poster

Construction subcontractors must be furnished the DOL *Notice to Employees Working on Federal and Federally Financed Construction Projects* poster (DOE WH Publication 1321) or instructed to download the poster from the following web site: <http://www.dol.gov/esa/regs/compliance/posters/davis.htm>

Equal Employment Requirements for Construction

For equal employment requirements for construction subcontracts, see SP 22.3, *Equal Employment Requirements*.

CLAUSES

The following clauses must be included in solicitations and subcontracts for fixed-price construction, subject to the Acts:

- *Davis-Bacon Act* (FAR 52.222-6);
- *Withholding of Funds* (FAR 52.222-7);
- *Payrolls and Basic Records* (FAR 52.222-8);
- *Apprentices and Trainees* (FAR 52.222-9).
- *Compliance with Copeland Act Requirements* (FAR 52.222-10);
- *Subcontracts (Labor Standards)* (FAR 52.222-11);
- *Contract Termination — Debarment* (FAR 52.222-12);
- *Compliance with Davis-Bacon and Related Act Regulations* (FAR 52.222-13);
- *Disputes Concerning Labor Standards* (FAR 52.222-14); and
- *Certification of Eligibility* (FAR 52.222-15).

The *Approval of Wage Rates* clause (FAR 52.222-16) must be included in solicitations and subcontracts for cost-reimbursement construction.

The *Contract Work Hours and Safety Standards Act* clause (FAR 52.222-4) must be included in solicitations and subcontracts if the subcontract will exceed \$100,000 in dollar value.

RESPONSIBILITIES:

Procurement Specialist

The procurement specialist must:

- Obtain general or project wage determinations for each subcontract subject to the Davis-Bacon Act and incorporate them into the subcontract;

LBNL – PROCUREMENT STANDARD PRACTICES

Section: 22 Labor Laws

Subject: 22.4 Construction Labor Standards

- Request through the DOE Contracting Officer that general or project wage determinations be obtained from DOL if not already available on the DOE web site;
- Ensure that construction subcontractors submit copies of weekly payrolls and weekly payroll statements of compliance within 14 days after the regular payment date of the payroll week;
- Ensure that compliance checking and investigations of subcontractors' adherence to the labor standards are conducted; and

Ensure that construction subcontractors submit a completed *Statement and Acknowledgement Form* (SF 1413), within 14 days of award of the subcontract or award of a lower-tier subcontract.

REFERENCES:

Prime Contract Clause H.26 – Additional Labor Requirements.

Prime Contract Clause I.114 – Contractor Purchasing System

Prime Contract Clause I.22 – Subcontracts (Labor Standards)

DOE Order 350.1 – Contractor Human Resources Management Programs